Re The Detention of Leonard Teoh Hooi Leong

HIGH COURT (JOHOR BAHRU) — CRIMINAL REVISION NO 43-1 OF 1998
ABDUL MALIK ISHAK J
19 JANUARY 1998

Criminal Procedure *— Police investigation — Application to revoke remand order — Investigation of kidnapping case — Whether remand order against solicitor retained by kidnapped person lawful — Whether solicitor prime suspect or potential witness*

Criminal Procedure *— Police investigation — Application to revoke remand order — Whether police had grounds for believing that accusation or information was well founded before application for detention was made — Criminal Procedure Code (FMS Cap 6) s 117*

Legal Profession *— Professional privilege — Communication between solicitor and client — Whether communication privileged where criminal investigation was involved*

Mr Leonard Teoh Hooi Leong, an advocate and solicitor ('the detainee'), was retained by one Nor'aishah bte Bokhari ('Nor'aishah') to advise her on her conversion to Christianity. On 30 December 1997, Nor'aishah disappeared from her parents' house and a police report was made. The police report principally alleged that Nor'aishah had been kidnapped by her lover. The police conducted extensive investigations and ultimately produced the detainee before the magistrate. The magistrate, upon perusal of a letter from the investigation officer, the police report and the investigation diary, had remanded the detainee for a period of seven days. Counsel for the detainee applied to the High Court to exercise its revisionary powers to revoke the remand order. It was argued that the detainee was a potential witness and not a prime suspect and consequently that remand order should be set aside and the detainee released forthwith.

Held, declaring the remand order lawful:

(1) As the police were investigating a kidnapping case involving Nor'aishah, the detainee's refusal to inform the police of Nor'aishah's whereabouts made him a prime suspect — the accused person — and the remand order would be appropriate in the circumstances and his remand by the magistrate was therefore lawful in law (see p 764E–F).

(2) A solicitor cannot be compelled to disclose legitimate communications, whether oral or written, passing directly between him and his client. This privilege, however, does not extend to communications made in furtherance of a fraud or a criminal act. The communications between the detainee and Nor'aishah were no longer privileged as it involved a criminal investigation (see p 764C–D, F).

(3) It is a mandatory requirement for the police to produce the investigation diary to show the entries under s 119 of the Criminal Procedure Code (FMS Cap 6) ('the CPC') to the magistrate for the purpose of obtaining a remand order (see p 765H–I); *Re The Detention of R Sivarasa & Ors* [1996] 3 MLJ 611 followed.

In the present case, the magistrate had before him a letter from the investigating officer of the case, which set out the need to remand the detainee accompanied by the police report in regard to the arrest of the detainee. Of crucial importance was the investigation diary of the police that was transmitted to the magistrate for his perusal. Under s 117 of the CPC, the learned magistrate may, on the mere perusal of the entries in the police diary and having satisfied himself, authorize the detention of the arrested person in custody for a term not exceeding 15 days in the whole.

It is the duty of the police to comply fully with the provisions of s 117 of the CPC and the magistrate should insist on strict compliance of that section. If the police do not satisfy the magistrate that a remand was necessary for the purpose of investigation, the magistrate is entitled under the law to release the accused person. In the context of the present revision, the police had grounds for believing that the accusation or information (s 117(1) of the CPC) was well founded before the application for the detention of the detainee was made. The investigation diary of the police clearly indicated that the detainee knew the whereabouts of Nor'aishah but he refused to reveal her whereabouts to the police.

Accordingly, the court was satisfied with the correctness, legality or propriety of the remand order recorded by the magistrate in this revision as envisaged in s 323(1) of the CPC (see pp 766B–D, 767C–E and 768D).

Obiter:

The detainee was not entitled to call for nor inspect the investigation diary unless the police officer who had made the investigation referred to it for purposes of ss 159 or 160 of the Evidence Act 1950, in which case, only such parts of it as were referred to shall be shown to the arrested person (see s 119(2) of the CPC). It followed that even counsel for the arrested person was not entitled to have sight of the investigation diary — the more so when the investigation in the present case was still ongoing (see p 766D–E).

[Bahasa Malaysia summary

Encik Leonard Teoh Hooi Leong, seorang peguambela dan peguamcara ('orang tahanan'), telah digaji oleh seorang bernama Nor'aishah bte Bokhari ('Nor'aishah') untuk menasihatinya tentang memeluk agama Kristian. Pada 30 Disember 1997, Nor'aishah

menghilangkan diri daripada rumah ibu bapanya dan suatu laporan polis telah dibuat. Laporan polis khususnya mengatakan bahawa Nor'aishah telah diculik oleh kekasihnya. Polis menjalankan siasatan terperinci dan akhirnya membawa orang tahanan di hadapan majistret. Selepas meneliti sepucuk surat daripada pegawai penyiasatan, laporan polis dan buku catatan siasatan, majistret telah menahan orang tahanan selama tujuh hari. Peguam orang tahanan memohon kepada Mahkamah Tinggi supaya melaksanakan kuasa penyemakannya untuk membatalkan perintah tahanan. Ia dihujahkan bahawa orang tahanan adalah bakal saksi dan bukan orang disyaki utama dan oleh itu perintah tahanan patut diketepikan dan orang tahanan dibebaskan dengan serta merta.

Diputuskan, mengisytiharkan perintah tahanan sah:

(1) Oleh kerana polis sedang menyiasat suatu kes penculikan yang membabitkan Nor'aishah, keengganan orang tahanan untuk memberitahu di manakah Nor'aishah menyebabkannya menjadi orang yang disyaki utama — orang tertuduh — dan perintah tahanan adalah wajar dalam keadaan itu dan tahanannya oleh majistret dengan itu adalah sah di sisi undang-undang (lihat ms 764E–F).

(2) Seseorang peguamcara tidak boleh dipaksa mendedahkan komunikasi yang sah, sama ada secara lisan atau bertulis, yang berlaku secara terus di antaranya dan kliennya. Namun demikian, keistimewaan ini tidak dilanjutkan kepada komunikasi yang dibuat sebagai melanjutkan fraud atau perbuatan jenayah. Komunikasi di antara orang tahanan dan Nor'aishah tidak lagi terlindung kerana ia membabitkan siasatan jenayah (lihat ms 764C–D, F).

(3) Adalah satu keperluan mandatori untuk pihak polis mengemukakan buku catatan siasatan bagi menunjukkan catatan di bawah s 119 Kanun Acara Jenayah (NMB Bab 6) ('KAJ') kepada majistret untuk tujuan memperolehi perintah tahanan (lihat ms 765H–I); *Re The Detention of R Sivarasa & Ors* [1996] 3 MLJ 611 diikut.

Dalam kes ini, majistret mempunyai di hadapannya sepucuk surat daripada pegawai penyiasatan kes, yang menyatakan keperluan untuk menahan orang tahanan bersama dengan laporan polis berkaitan dengan tangkapan orang tahanan. Apa yang penting sekali adalah buku catatan pihak polis yang dihantar kepada majistret untuk penelitian beliau. Di bawah s 117 KAJ, majistret yang bijaksana boleh, selepas meneliti catatan dalam buku catatan pihak polis dan memuaskan diri, memberi kuasa untuk menahan orang yang ditangkap itu untuk tempoh tidak melebihi 15 hari keseluruhannya.

Adalah kewajipan pihak polis untuk mematuhi sepenuhnya peruntukan s 117 KAJ dan majistret harus bertegas terhadap pematuhan ketat seksyen itu. Sekiranya pihak polis tidak

memuaskan majistret bahawa tahanan adalah perlu untuk tujuan siasatan, majistret adalah berhak di bawah undang-undang untuk membebaskan tertuduh. Dalam konteks penyemakan ini, pihak polis mempunyai sebab untuk mempercayai bahawa pertuduhan atau maklumat (s 117(1) KAJ) wujud sebelum permohonan untuk tahanan orang tahanan dibuat. Buku catatan pihak polis jelas menunjukkan bahawa orang tahanan tahu di manakah Nor'aishah berada tetapi enggan mendedahkan maklumat kepada pihak polis.

Oleh itu, mahkamah berpuas hati dengan kebetulan, kesahan atau kewajaran perintah tahanan yang direkodkan oleh majistret dalam penyemakan ini seperti yang dibayangkan dalam s 323(1) KAJ (lihat ms 766B–D, 767C–E dan 768D).

Obiter:

Orang tahanan tidak berhak memanggil atau memeriksa buku catatan siasatan melainkan pegawai polis yang menjalankan siasatan merujuk kepadanya untuk tujuan ss 159 atau 160 Akta Keterangan 1950, yang mana, hanya bahagian yang dirujuk harus ditunjukkan kepada orang yang ditangkap (lihat s 119(2) KAJ). Ini bermakna bahawa peguam orang yang ditangkap pun tidak berhak melihat buku catatan siasatan — apatah lagi apabila siasatan dalam kes ini masih berlanjutan (lihat ms 766D–E).]

Notes

For cases on police investigation, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1861–1961.

For cases on professional privilege, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1642–1648.

Cases referred to

Abdul Jabbar v Superintendent of District Jail (1984) 2 ACC 221 (refd)
Balabel & Anor v Air India [1988] Ch 317 (refd)
Bir Bhadra Pratap Singh v DM Azamgarh AIR 1959 All 384 (refd)
Butler v Board of Trade [1971] Ch 680 (refd)
Chong Fook Kam & Anor v Shaaban & Ors [1968] 2 MLJ 50 (refd)
Emperor v Kampu Kuki 6 Cr LJ 36 (refd)
Finers (a firm) & Ors v Miro [1991] 1 All ER 182 (refd)
Gaibidingpoo Kabui v Union Territory of Manipur AIR 1963 Mani 12 (refd)
PP v Audrey Keong Mei Cheng [1997] 3 MLJ 477 (refd)
Khuda Baksh v Crown 17 PR 1872 (refd)
Lawrence v Campbell (1859) 4 Drew 485 (refd)
Minter v Priest [1930] AC 558 (refd)
Nabachandra Singh v Manipur Administration Air 1964 Manipur 39 (refd)
Noorul Huda v Superintendent, Central Jail, Naini, Allahabad [1984] All LJ 561 (refd)
O'Rourke v Darbishire & Ors [1920] AC 581 (refd)
R Sivarasa & Ors, Re The Detention of [1996] 3 MLJ 611 (folld)

A *RK Nabachandra Singh v Manipur Administration* AIR 1964 Mani 39 (refd)
Sarah C Getty Trust, Re [1985] QB 956 (refd)
Sundar Singh v Emperor AIR 1930 Lah 945 (refd)
V Daniel v PP [1956] MLJ 186 (refd)

B **Legislation referred to**

Criminal Procedure Code (FMS Cap 6) ss 117, 119, 323(1)
Evidence Act 1950 ss 159, 160

Tan Poh Lai (*Lee Min Choon* with her) (*Lee Min Choon & Co*) for the C detainee.
Amelia Tee Hong Geok (Senior Deputy Public Prosecutor) for the Public Prosecutor.

Abdul Malik Ishak J: This revision was called at the instance of D Messrs Lee Min Choon & Co, a firm of advocates and solicitors, who by letter dated 15 January 1998 implored this court to exercise its revisionary powers to revoke the remand order as ordered by Mr Mohamed Haldar bin Abdul Aziz, the learned magistrate of the Pontian Magistrate's Court, Johore on an advocate and solicitor by the name of Mr Leonard Teoh Hooi Leong ('Leonard Teoh'). The learned magistrate had remanded E Leonard Teoh for a period of seven days commencing from 14 January 1998 and ending on 20 January 1998. That letter questioned the propriety of the remand order of the learned magistrate.

Background facts

F In his capacity as an advocate and solicitor, Leonard Teoh acted for one Nor'aishah bte Bokhari ('Nor'aishah'), a Malay lady of 25 years of age. She was born a Muslim and at the material time professing the Islamic religion and was working with Citibank in Kuala Lumpur. Trouble reared its ugly head when she fell in love with one Joseph Arnold Lee, a Christian G Chinese. The cupid arrow must have struck Nor'aishah right smack into her heart so much so that she lost all sense of balance. He must have used love potion number 9, for she seemed to be on cloud nine. As Francis Bacon once remarked: 'It is impossible to love and be wise'. Shakespeare too in 'A Midsummer Night's Dream' once said: 'The course of true love never did run smooth'. Reverting back to the mainstream of the case, H Nor'aishah decided to renounce the Islamic faith and was bent on embracing Christianity. Leonard Teoh was retained by Nor'aishah to advise her on her conversion to Christianity and on her instructions prepared for her a statutory declaration renouncing Islam which she duly affirmed before a commissioner for oaths on 22 October 1997. The statutory declaration I makes for interesting reading and it was worded thus:

Surat Akuan

Saya, Nor'aishah bte Bokhari (No K/P 720517-01-5172) seorang warganegara Malaysia yang cukup umur dan beralamat di No 5, Jalan AU 5C/8, Lembah Keramat, 54200 Kuala Lumpur dengan sesungguhnya mengaku bahawa —

1 Nama bapa saya ialah Bokhari bin Md Tahir. Beliau dilahirkan Islam dan berbangsa Melayu. Beliau sentiasa mempercayai dan masih mengamalkan Agama Islam.

2 Nama ibu saya ialah Samiah @ Aton bte Taha, dilahirkan Islam dan beliau berbangsa Melayu. Beliau sentiasa mempercayai dan masih mengamalkan Agama Islam.

3 Ibu saya berkahwin dengan bapa saya mengikut adat Islam dan saya dilahirkan pada 17 Mei 1972.

4 Saya pernah memahami, mempercayai dan mengamalkan Agama Islam tetapi saya sekarang mula mempercayai dan mengamalkan Agama Katholik (Kristian); oleh itu saya ingin memeluk Agama Katholik tanpa paksaan dari mana-mana pihak tetapi atas kerelaan hati saya sendiri.

5 Saya ingin dengan secara resmi melepaskan, menolak dan meninggalkan Agama Islam dan nama saya Nor'aishah bte Bokhari dan mengambil nama Aishah Felicia Bokhari sebagai nama baru saya dari tarikh ini.

Dan saya membuat surat akuan ini dengan kepercayaan bahawa segala yang tersebut di dalamnya adalah benar serta menurut Akta Akuan Berkanun 1960.

Diperbuat dan dengan sebenar-benarnya diakui oleh yang tersebut namanya di atas iaitu Nor'aishah bte Bokhari di Kuala Lumpur pada 22 Oktober 1997 pada 1.00 petang

Sgd (Illegible)

Di hadapan saya

Sgd (Illegible)
Tan Gee Tham
Pesuruhjaya Sumpah (W 044)
Suite 37 Imbi Plaza,
Jalan Imbi,
53100 Kuala Lumpur,
Malaysia.

In no uncertain terms, Nor'aishah has renounced Islam for Christianity as reflected in the statutory declaration. Leonard Teoh served the statutory declaration on the Majlis Agama Islam Wilayah Persekutuan by letter dated 19 November 1997 and that letter was worded thus:

Leonard Teoh & James Lau
Peguambela & Peguamcara
Advocates & Solicitors

Leonard Teoh Hooi Leong
LLB (Hons) S'pore.

Office hours
Monday to Friday
8.30am to 5.30pm

Bilangan Tuan:

Bilangan Kami: THL/NBB/475/97

Tarikh: 19 November 1997

Serahan Courier

Jabatan Agama Islam Wilayah Persekutuan,
Bangunan Sulaiman,
50676 Kuala Lumpur.

Tuan,

Per: Surat Akuan — Nor'aishah bte Bokhari

Kami bertindak untuk Cik Nor'aishah bte Bokhari berkenaan dengan perkara yang tersebut di atas.

Dengan secara tugas, kami melampirkan sesalinan surat akuan bersetem yang dilaksanakan oleh pelanggan kami untuk rekod dan makluman tuan.

Yang benar
Leonard Teoh & James Lau
Sgd (Illegible)
sk Pelanggan.
THL/ao
lamp.

Nor'aishah broke the bad news about her conversion to Christianity and her love for Joseph Arnold Lee to her parents. This was on 19 November 1997. Naturally, her parents were distraught. They knew that their daughter was guilty of apostasy. It was alleged that her parents, her brother and her uncle were in league and had kept her under confinement on 20 November 1997. On 28 November 1997, a writ of habeas corpus for the release of Nor'aishah was filed in the High Court of Kuala Lumpur vide Criminal Application No 44–50–97 that was scheduled for hearing on 12 December 1997 and, subsequently, postponed to 7 January 1998 and, lastly, to 19 January 1998. It seemed that Nor'aishah had escaped on 30 December 1997 from the clutches of her parents and implored her lover Joseph Arnold Lee to assist her. The disappearance of Nor'aishah from her parents' house was reported to the police and it became Pontian Police Report No 17/98. That police report principally alleged that Nor'aishah had been kidnapped by Joseph Arnold Lee. The police conducted extensive investigations and ultimately produced Leonard Teoh before the learned magistrate of the Pontian Magistrate's Court, Johore who then remanded the advocate and solicitor for seven days as adverted to in the early part of this judgment.

Nor'aishah became famous overnight. News of her conversion made headlines in the local dailies. The reporters had a field day.

The remand order of the learned magistrate

It was argued by Madam Tan Poh Lai, learned counsel for Leonard Teoh, that the detainee was a potential witness and not a prime suspect and, consequently, that remand order should be set aside and the detainee

released forthwith. Shaik Daud JCA writing for the Court of Appeal in the case of *PP v Audrey Keong Mei Cheng* [1997] 3 MLJ 477 said at p 482 of the report:

> ... We would, without hesitation, hold that it would be an abuse of the process of law for police officers to use the machinery of s 117 of the CPC to compel witnesses or potential witnesses to come forward to assist in their investigations. There are other provisions in the CPC for this purpose.

Was Leonard Teoh a potential witness or a prime suspect? It cannot be denied that as counsel for Nor'aishah, Leonard Teoh was privy to certain privileged information. But the veil of privilege may be set aside by the court on the application of a solicitor who suspects that fraud or a crime had been committed by his client: *Finers (a firm) & Ors v Miro* [1991] 1 All ER 182; [1991] 1 WLR 35 (CA). A solicitor cannot be compelled to disclose legitimate communications, whether oral or written, passing directly between him and his client. This privilege, however, does not extend to communications made in furtherance of a fraud or a criminal act (*Lawrence v Campbell* (1859) 4 Drew 485; *O'Rourke v Darbishire & Ors* [1920] AC 581 (HL) (which was dutifully followed by *Butler v Board of Trade* [1971] Ch 680; [1970] 3 All ER 593); *Minter v Priest* [1930] AC 558 at pp 580–582 (HL); *Re Sarah C Getty Trust* [1985] QB 956; [1985] 2 All ER 809 and *Balabel & Anor v Air India* [1988] Ch 317; [1988] All ER 246 (CA)). As the police were investigating a kidnapping case involving Nor'aishah, Leonard Teoh's refusal to inform the police of Nor'aishah's whereabouts made him a prime suspect and the remand order would therefore be appropriate in the circumstances (*PP v Audrey Keong Mei Cheng*). The communications between Leonard Teoh and Nor'aishah were no longer privileged as it involved a criminal investigation. This was my judgment and I so hold accordingly.

Authorities are abound in regard to the interpretation of s 117 of the Criminal Procedure Code (FMS Cap 6) ('the CPC'). Suffian LP observed in *Chong Fook Kam & Anor v Shaaban & Ors* [1968] 2 MLJ 50 at p 52 that 'an order of a magistrate authorizing the detention of the arrested person beyond the period of 24 hours made under s 117 is a judicial act and cannot found a claim for damages against the magistrate'. In India, in the case of *Nabachandra Singh v Manipur Administration* AIR 1964 Mani 39 especially at pp 44–45 of the report, the court there decided on s 167(1) of the Indian Criminal Procedure (equivalent to our s 117 of the CPC) — particularly the purpose of that section. That case decided that in order to decide the question of remand, the magistrate must be satisfied on a perusal of the entries in the police diary that there were grounds for believing that the accusation or information against the accused was well founded and that the police have exercised their right of arresting without warrant legally and that it was necessary for the purpose of the investigation that the accused should be remanded in custody. Thus, unless the magistrate was satisfied on all these points, he cannot remand the accused to jail custody. That case too decided that a copy of the entries in the police diary should be transmitted to the magistrate for his perusal. In *Gaibidingpoo Kabui v Union Territory of Manipur* AIR 1963 Mani 12, the court there

held that if the police do not transmit to the court a copy of the entries in the diary relating to the case to satisfy the magistrate that there are grounds for believing that the accusation or information is well-founded, and that a remand is absolutely necessary for the purpose of the investigation, the magistrate has no jurisdiction to direct the detention of the arrested person. In the same vein, and decided in tandem with *Gaibidingpoo Kabui v Union Territory of Manipur* would be the following cases:

(1) *RK Nabachandra Singh v Manipur Administration* AIR 1964 Mani 39 at p 45;

(2) *Abdul Jabbar v Superintendent of District Jail* (1984) 2 ACC 221; and

(3) *Noorul Huda v Superintendent, Central Jail, Naini, Allahabad* [1984] All LJ 561.

KC Vohrah J in *Re The Detention of R Sivarasa & Ors* [1996] 3 MLJ 611 observed at p 618 of the report:

> In this case, no copy of the entries in the diary was transmitted to the magistrate. The failure to transmit to the magistrate a copy of the entries was fatal to the application before the magistrate as it meant that the magistrate did not have the prescribed material (especially that referred to in s 119(1)(d)) to act upon in her judicial enquiry whether to order further remand (see *Re Burla Jayarami & Ors* 1957 Cr LJ 1062 in respect of the equipollent section, s 167 of the Indian Criminal Procedure Code). She had no jurisdiction to make the order of remand.

At p 619 of the report, KC Vohrah J continued in these words:

> ... Section 117 also requires that there be 'grounds for believing that the accusation or information' is well founded for the police officer to make his application for detention. These grounds, needless to say, are subject to judicial scrutiny.

At the same page of the same judgment, KC Vohrah J continued:

> It has to be stressed that a magistrate ought not give a remand order in police custody without his satisfying himself as to its necessity and that the period of remand ought also to be restricted to the necessities of the case (see *Bal Krishna v Emperor* AIR 1931 Lah 99). If the necessities of the case for remand or further remand are not shown, no remand order should be made.

The mandatory requirement to produce the investigation diary to show the entries under s 119 of the CPC to the learned magistrate before a remand order was made formed the ratio decidendi of *Re The Detention of R Sivarasa*. The same approach was adopted by Shaik Daud JCA in *PP v Audrey Keong Mei Cheng* where his Lordship said at p 482 of the report:

> In our judgment, it is mandatory for the police to produce a copy of the diary as prescribed by s 119 of the CPC. The details in such a diary would provide a true picture of the proceedings in the investigation in compliance with s 119 of the CPC. Since the police, in this case, failed to do this, the registrar would be right, in law, to refuse to order the further detention of the respondent.

It is pertinent to point out and emphasis should be made that investigation diaries were not produced in *Re The Detention of R Sivarasa* and in *PP v Audrey Keong Mei Cheng*. The same cannot be said of the present revision. Here before me, the learned magistrate had before him a letter from ASP Puspanathan a/l Wiresingam, the investigating officer of the case, which sets out the need to remand Leonard Teoh accompanied by the police report of the said ASP in regard to the arrest of the detainee. Of crucial importance was the investigation diary of the said ASP that was transmitted to the learned magistrate for his perusal. Datin Amelia Tee Hong Geok, the learned senior deputy public prosecutor, rightly submitted that the investigation diary of the said ASP contained a contemporaneous record of what the said ASP had done. That investigation diary contained 42 entries and juicy details were recorded therein. I am inclined not to let learned counsel for the detainee to have sight of the investigation diary on the authority of *Sundar Singh v Emperor* AIR 1930 Lah 945. In my judgment, under s 117 of the CPC, the learned magistrate may, on the mere perusal of the entries in the police diary and having satisfied himself, authorize the detention of the arrested person in custody (here Leonard Teoh) for a term not exceeding 15 days in the whole. As an arrested person, Leonard Teoh was not entitled to call for nor inspect the investigation diary of the said ASP unless the police officer who has made the investigation refers to it for purposes of s 159 or s 160 of the Evidence Act 1950, in which case, only such parts of it as are referred to shall be shown to the arrested person (see s 119(2) of the CPC). It follows that even learned counsel for the arrested person was not entitled to have sight of the investigation diary — the more so when the investigation in the present case was still ongoing.

Section 159 of the Evidence Act 1950 deals principally with a witness refreshing his memory by referring to any writing made by himself while under examination. Of course, the witness must apply to the court to refer to the statement. This was clearly the stand taken by Edgar Joseph Jr J (now FCJ) in *PP v Paneerselvan* [1991] 1 MLJ 106 where at p 109, his Lordship remarked:

> Having said that, however, I would hold that PW4 is at liberty to apply to the court to refresh his memory by reference to the statements in accordance with the requirements of s 159.

Section 160 of the Evidence Act 1950 is but an extension of the rule in s 159. Briefly, s 160 of the Evidence Act 1950 provides that a witness may testify to facts mentioned in any such document as is mentioned in s 159 of the Evidence Act 1950, although he has no specific recollection of the facts themselves, so long as the witness is certain that the facts were correctly recorded in the document.

The distinction between ss 159 and 160 of the Evidence Act 1950 was amply stated by Buhagiar J in *V Daniel v PP* [1956] MLJ 186 at p 190 in these words:

> Now a document may be used in giving evidence for two purposes, namely: (a) to refresh his memory (s 159 of the Evidence Ordinance); and (b) to

A testify to facts stated in the document (s 160). In the first instance, the witness is not giving evidence without specific recollection of the facts; after reference to the document his memory is refreshed and I do not think that in such a case there is any reason or necessity for the introduction of the document itself. In the second instance, what the witness says amounts to this: that he has no recollection whatsoever of the facts and that all he can B say is that certain entries had been made at the time and that such entries would be true and accurate; then it is necessary to introduce the document in evidence.

It is wrong to assume that the remand of an arrested person should be ordered by the magistrate generally as a matter of course. The sooner this C assumption is done away with, the better it would be for the administration of justice in the country. It is the duty of the police to comply fully with the provisions of s 117 of the CPC and the magistrate should insist on strict compliance of that very section. If the police do not satisfy the magistrate that a remand was necessary for the purpose of investigation, the magistrate is entitled under the law to release the accused person (*RK Nabachandra* D *Singh v Manipur Administration*). In the context of the present revision, the said ASP had grounds for believing that the accusation or information (s 117(1) of the CPC) was well founded before the application for the detention of Leonard Teoh was made. The investigation diary of the said ASP clearly indicated that Leonard Teoh knew the whereabouts of Nor'aishah but he refused to reveal her whereabouts to the police. E

In investigating a kidnapping case, Leonard Teoh was regarded as a prime suspect by the police — the accused person and his remand by the learned magistrate was therefore lawful in law. As an advocate and solicitor, Leonard Teoh should know the law and he cannot hide behind the 'skirt of privilege' to say that he was not authorized to reveal the whereabouts of F Nor'aishah. A crime was committed and the police rightly investigated the case meticulously. The illegitimate communication between Leonard Teoh and Nor'aishah pertained to a criminal act and when the former was arrested in Kuala Lumpur and escorted to Pontian police station, he should know the magnitude of the offence which the police was investigating. G He should, applying *Finers (a firm) v Miro*, openly assisted the police and the learned magistrate by revealing the whereabouts of Nor'aishah. Mr Lee Min Choon submitted at the bar that Leonard Teoh had 30 years legal standing at the bar. If that was so, the action of Leonard Teoh did not reveal that kind of maturity as one would expect of a senior member of the legal profession. Incidentally, Mr Lee Min Choon informed the court from H the bar table that he had this morning withdrew the writ of habeas corpus for the release of Nor'aishah before the Kuala Lumpur High Court. That was a wise move as Nor'aishah was no longer held in confinement. The law on remand can compendiously be stated as follows though not exhaustively:

I (a) It is mandatory for the police to produce the investigation diary and the accused to the magistrate for the purpose of obtaining a remand order (s 117(1) of the CPC).

(b) The magistrate must scrutinize the investigation diary and then decide whether to detain the accused person; failure to exercise this simple

rigmarole would render the order of detention illegal (*Bir Bhadra Pratap Singh v DM Azamgarh* AIR 1959 All 384 at p 387).

(c) Before granting the remand, the magistrate should satisfy himself that 'there are grounds for believing that the accusation or information is well founded' (s 117(1) of the CPC).

(d) That the presence of the accused while the police conducted the investigation would assist in discovery of some evidence and that the presence of the accused was indispensable for that purpose (*Emperor v Kampu Kuki* 6 Cr LJ 36; 11 CWN 554).

(e) It is not a sufficient reason to grant a remand on mere expectation that time would show the guilt of the accused or that further facts would come to light (*Khuda Baksh v Crown* 17 PR 1872 (Cr)).

(f) It is permissible to remand an accused person in order to record his caution statement under s 113 of the CPC or its equivalent.

I was satisfied as to the correctness, legality or propriety of the remand order recorded by the learned magistrate in this revision as envisaged in s 323(1) of the CPC. I have no hesitation to hold that the learned magistrate had remanded Leonard Teoh within the law and, consequently, there was nothing for me to revise.

Order accordingly.

Reported by Jafisah Jaafar

End of Volume 1